

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOMAR BECK,

Plaintiff,

vs.

Case No. 04-CV-72687
HON. GEORGE CARAM STEEH

ST. CLAIR SHORES
P.O. BURTON HEWLETT, et al.,

Defendants.

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ORDER DENYING DEFENDANTS' MOTION FOR
COSTS PURSUANT TO M.C.R. 2.403(O) (#43)

Defendants move for an award of mediation sanctions under Michigan Court Rule 2.403(O) following a no-cause jury verdict. Oral argument would not significantly aid the decisional process. Pursuant to E.D. Mich. Local R. 7.1(e)(2), it is ORDERED that the motion be resolved without oral argument.

Defendants' motion is without merit. Eastern District of Michigan Local Court Rule 16.3(a)(2) is permissive, stating that "[t]he parties may stipulate to procedural rules for mediation . . . [which] may include . . . the award of attorney fees as a sanction." See also Mencer v. Princeton Square Apartments, 228 F.3d 631, 636 (6th Cir. 2000) (recognizing that "the local rule is permissive, allowing parties to stipulate to the specific tools of mediation, such as the use of sanctions and the binding effect of the proceedings"). As part of the court's August 30, 2004 Scheduling Order, the parties were provided with a form "STIPULATED REQUEST FOR CASE EVALUATION," which includes an express

stipulation applying "the alternate dispute resolution rule contained in Michigan Court Rule 2.403 including sanctions relating to costs and attorney fees as provided by such rule." The parties did not execute this form, but instead executed a June 9, 2005 "STIPULATION AND ORDER FOR SPECIAL MEDIATION," expressly providing for "special mediation in lieu and in place of regular Circuit Court mediation." The parties did not stipulate to applying the sanction provisions of M.C.R. 2.403(O). Absent such a stipulation, defendants are not entitled to an award of costs and attorney fees under M.C.R. 2.403(O). E.D. Mich. LR 16.3(a)(2); Mencer, 228 F.3d at 636. Accordingly,

Defendants' motion is hereby DENIED.

SO ORDERED.

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

Dated: January 17, 2006

CERTIFICATE OF SERVICE

Copies of this Order were served on the attorneys of record on January 17, 2006, by electronic and/or ordinary mail.

s/Josephine Chaffee
Secretary/Deputy Clerk